

MRO  
9-10-01

12-17-2001



Form PTO-1594 R  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)  
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U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

MRO  
9-01-6  
12-01-01

1. Name of conveying party(ies): 9.1001  
VAXA INTERNATIONAL, INC., now known  
as V I LIQUIDATING CORP.  
 Individual(s)  Association  
 General Partnership  Limited Partnership  
 Corporation-State Delaware  
 Other \_\_\_\_\_  
Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
Name: Direct Access Network, Inc.  
Internal Address: Attn: Sabine Niehaus  
Street Address: 4010 State Street  
City: Tampa State: FL Zip: 33609  
 Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_ SEP 10 2001  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State Florida  
 Other \_\_\_\_\_  
If assignee is not domiciled in the United States, a domestic  
representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Other \_\_\_\_\_  
Execution Date: 6/25/99

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)  
75/609035  
Additional number(s) attached  Yes  No

B. Trademark Registration No.(s)

5. Name and address of party to whom correspondence  
concerning document should be mailed:  
Name: Direct Access Network, Inc.  
Internal Address: Attn: Sabine Niehaus  
4010 State Street  
Tampa, FL 33609  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

6. Total number of applications and  
registrations involved: ..... 1  
7. Total fee (37 CFR 3.41).....\$ 40.00  
 Enclosed  
 Authorized to be charged to deposit account  
8. Deposit account number:  
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.  
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true  
copy of the original document.  
Michael E. Busch  
Attorney for V I LIQUIDATING CORP. Michael Busch 9/7/01  
Name of Person Signing Signature Date

09/13/2001 DBYRNE 00000254 75609035

Total number of pages including cover sheet, attachments, and document: 1

01 FC:481

40.00 All documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

**DECLARATION OF MICHAEL E. BUSCH IN SUPPORT OF  
VAXA INTERNATIONAL'S PETITION TO REVIVE APPLICATION  
SERIAL NUMBER 75/609035 RE: MARK: BUFFER-PH+**

I, Michael E. Busch, hereby declare:

1. I am an attorney admitted to practice in the state and federal courts in the State of California. As explained below, I and my firm Pyle Sims Duncan & Stevenson, APC, were the attorneys for the Chapter 11 Bankruptcy Trustee for the bankruptcy estate of Vaxa International, Inc., now known as VI Liquidating Corp. ("Debtor"). I and my firm continued on as attorneys for the Bankruptcy Trustee following the confirmation of a Plan of Reorganization. According to the terms of the Plan of Reorganization, the Bankruptcy Trustee was replaced by Richard M. Kipperman, as Disbursing Agent with all the powers and authority of the Trustee to act for the Debtor and carry out the Plan. I and my firm continue as attorneys for Mr. Kipperman as Disbursing Agent. Therefore, I have personal knowledge of the matters set forth in this declaration. I am over the age of 18 years, and could competently testify to the matters set forth in this declaration.

2. I make this declaration at the request of Direct Access Network, Inc, doing business as Vaxa International, in support of its Petition to Revive Application Serial No. 75/609035 for the mark : BUFFER-PH+.

3. On October 7, 1997, Vaxa International, Inc., a Delaware corporation, filed a Chapter 11 bankruptcy case in the United States Bankruptcy Court for the Southern District of California, Case No. 97-14880-A11. On February 5, 1999, the Court appointed Ronald J. Sutter as Chapter 11 Trustee for the Debtor. On or about March 25, 1999, Mr. Sutter as Trustee retained the firm of Pyle Sims Duncan & Stevenson, APC to act as his attorneys.

4. By order entered June 24, 1999, the United States Bankruptcy Court entered its Order Granting The Trustee's Motion for Approval of: (1) Sale of Estate's Interest in Substantially All of the Estate's Assets (Including Assumption and Assignment of Certain Executory Contracts) Free and Clear of All Liens, Claims and Encumbrances and Other Interests; (2) Limited Assignment of Certain Specific Liabilities and Termination of Estate's Liability Thereon; and (3) Rejection of Certain Executory Contracts; Subject to Overbid. That Order approved the Asset Purchase Agreement negotiated between Direct Access Network, Inc. as Purchaser and the Trustee on behalf of the Debtor estate as Seller, and approved the sale provided for under the Asset Purchase Agreement. A true and correct copy of the order is attached hereto as Exhibit "1." An unsigned copy of the Asset Purchase Agreement is attached to Exhibit "1" hereto as Exhibit "A."

5. The Asset Purchase Agreement expressly provides that among the items sold to Direct Access Network, Inc. is:

"(d) all formulas, trademarks, tradenames, customer lists, distributor lists, and other Proprietary Assets and goodwill of the Seller (including the right to use the name "Vaxa International" and variations thereof and the right to enforce all of Seller's rights to the Proprietary Assets and goodwill)." Paragraph 1.1(d) at page 2.

The term Proprietary Assets is defined in Exhibit "A" to Exhibit "A" as:


**Proprietary Asset.** "Proprietary Asset" shall mean any formula, patent, patent application, trademark (whether registered or unregistered and whether or not relating to a published work), trademark application, trade name, fictitious business name, service mark (whether registered or unregistered), service mark application, copyright (whether registered or unregistered), copyright application, maskwork, maskwork application, trade secret, know-how, customer list, distributor list, franchise, system, computer software, invention, design, blueprint, engineering drawing, proprietary product, technology, proprietary right or other intellectual property right or intangible asset." Exhibit A, p. 3.

6. The Asset Purchase Agreement and related documents were signed and the sale to

Direct Access Network, Inc. closed on June 25, 1999.

7. As a result of the sale, Direct Access Network, Inc. has the right to, and has been doing business as, "Vaxa International". Direct Access Network, Inc., dba Vaxa International holds all of the former Vaxa Inc.'s right, title and interest in the trademarks and applications formerly belonging to the Debtor. As a result of the sale of the name Vaxa International, the Debtor has formally legally changed its name to VI Liquidating Corp., Inc., a Delaware corporation, and that is now the name of the Debtor under the Chapter 11 Plan of Reorganization.

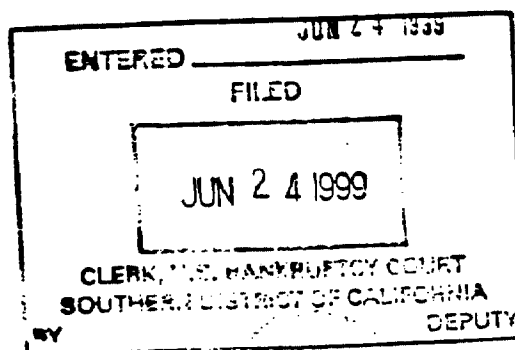
I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that I executed this declaration this 18<sup>th</sup> day of July, 2001 at San Diego, California.

  
\_\_\_\_\_  
Michael E. Busch

*C:\wp\ACTIVE CASES\8465-001\lit\declaration re trademark.wpd*

1 PYLE SIMS DUNCAN & STEVENSON  
A Professional Corporation  
2 Michael E. Busch (89549)  
Kathleen A. Cashman-Kramer (128861)  
3 401 "B" Street, Suite 1500  
San Diego, CA 92101  
4 (619) 687-5200

5 General Bankruptcy Counsel  
for Chapter 11 Trustee Ronald J. Sutter  
6



7  
8 UNITED STATES BANKRUPTCY COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 In re )  
11 )  
12 VAXA INTERNATIONAL, INC., a Delaware )  
Corporation. )  
13 Debtor. )

Case No. 97-14880-A11

ORDER GRANTING THE TRUSTEE'S  
MOTION FOR APPROVAL OF: (1) SALE  
OF ESTATE'S INTEREST IN  
SUBSTANTIALLY ALL OF THE  
ESTATE'S ASSETS (INCLUDING  
ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS)  
FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES AND OTHER  
INTERESTS; (2) LIMITED ASSIGNMENT  
OF CERTAIN SPECIFIED LIABILITIES  
AND TERMINATION OF ESTATE'S  
LIABILITY THEREON; AND (3)  
REJECTION OF CERTAIN EXECUTORY  
CONTRACTS; SUBJECT TO OVERBID

Hearing Date: June 7, 1999  
Time: 10:00 a.m.  
Dept.: 2 (Chief Judge Louise DeCarl Adler)

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22 The hearing on the motion of Ronald J. Sutter, Chapter 11 trustee ("Trustee") for the Debtor  
23 Vaxa International, Inc. ("Debtor") for Approval Of: (1) Sale of Estate's Interest in Substantially All  
24 of the Estate's Assets (Including Assumption and Assignment of Certain Executory Contracts) Free  
25

26 In re VAXA INTERNATIONAL, INC. Case No. 97-14880-A11  
ORDER GRANTING THE TRUSTEE'S MOTION FOR APPROVAL OF: (1) SALE OF ESTATE'S INTEREST  
27 IN SUBSTANTIALLY ALL OF THE ESTATE'S ASSETS (INCLUDING ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS) FREE AND CLEAR OF ALL LIENS, CLAIMS,  
28 ENCUMBRANCES AND OTHER INTERESTS; (2) LIMITED ASSIGNMENT OF CERTAIN SPECIFIED  
LIABILITIES AND TERMINATION OF ESTATE'S LIABILITY THEREON; AND (3) REJECTION OF  
CERTAIN EXECUTORY CONTRACTS; SUBJECT TO OVERBID

N:\WP\1445-001\lit\sale free and clear order

EXHIBIT "1"

1 and Clear of All Liens, Claims, Encumbrances and Other Interests; (2) Limited Assignment of  
2 Certain Specified Liabilities and Termination of Estate's Liability Thereon; and (3) Rejection of  
3 Certain Executory Contracts; Subject to Overbid ("Sale Motion"), came on regularly for hearing  
4 before this Court on June 7, 1999 at 10:00 a.m. before the Honorable Louise DeCarl Adler, Chief  
5 Judge, presiding. Present at this hearing were Pyle Sims Duncan & Stevenson, APC, by Michael  
6 E. Busch, Esq., counsel for the Trustee. The Trustee and Douglas Anderson, the Trustee's valuation  
7 consultant, were also present at the hearing. Other appearances were as follows: Luce Forward  
8 Hamilton & Scripps LLP by Margaret M. Mann, Esq. and Dustin Branch, Esq. for the Official  
9 Committee of Unsecured Creditors ("OCC"); Allen Matkins Lech Gamble & Mallory, by David  
10 Osias, Esq., attorney for the proposed purchaser, Mr. William Harper; Robert Wright, Esq., for  
11 Biomin Industries, creditor; and David Ortiz, Esq., counsel for the Office of the U.S. Trustee. Other  
12 appearances were as noted in the record.

13 Upon consideration of the Trustee's Motion, the papers filed in support of and in opposition  
14 to the Motion, the evidence presented at the hearing on June 7, 1999, including testimony taken by  
15 the Court under oath, after argument of counsel for the parties, there being no qualified overbidders,

16 ~~and good cause appearing therefore.~~ *and Lodgment of the Order being*  
17 *waved by the Court for cause,*  
18 THE COURT FINDS AS FOLLOWS:

19 1. Notice of this Motion was properly given to all creditors and parties in interest and  
20 parties of record with any purported interest in or lien against any of the subject property. In  
21 addition, notice was given to other persons and entities who were previously identified as potential  
22 overbidders.

23 2. This Motion is a core proceeding.

24 3. The sale is in the best interests of the creditors, interest-holders, the Debtor and this  
25 estate.

26 In re VAXA INTERNATIONAL, INC.

Case No. 97-14880-A11

27 **ORDER GRANTING THE TRUSTEE'S MOTION FOR APPROVAL OF: (1) SALE OF ESTATE'S INTEREST**  
28 **IN SUBSTANTIALLY ALL OF THE ESTATE'S ASSETS (INCLUDING ASSUMPTION AND ASSIGNMENT**  
**OF CERTAIN EXECUTORY CONTRACTS) FREE AND CLEAR OF ALL LIENS, CLAIMS,**  
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**LIABILITIES AND TERMINATION OF ESTATE'S LIABILITY THEREON; AND (3) REJECTION OF**  
**CERTAIN EXECUTORY CONTRACTS; SUBJECT TO OVERBID**

NAWP8465-001 lit/sale free and clear order

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TRADEMARK

REEL: 002383 FRAME: 0111

1 4. The price obtained for the Property (as defined below), and the terms of the purchase  
2 and sale of the Property, are reasonable, fair and adequate and for value, in consideration of all  
3 circumstances.

4 5. The proposed buyer, Mr. William Harper, or his designated entity (the "Buyer") is  
5 determined by the Court to be a good faith purchaser and lease assignee for value, pursuant to  
6 Section 363(m) of the Bankruptcy Code. The Buyer has no connection to the Debtor or this estate,  
7 except that Mr. Harper has identified Mr. Jake Kevorkian, a non-insider creditor and former  
8 independent distributor for the Debtor, as part of Buyer's prospective management team. The  
9 connection of Mr. Kevorkian to the Buyer has been disclosed, and does not prevent Buyer from  
10 being a good-faith purchaser/assignee for value.

11 6. The Buyer is not a successor to the Seller for purposes of successor liability and  
12 related doctrines and theories of legal or equitable recovery, and no creditor or interest holder in or  
13 of the Debtor may assert such claim or interest against Buyer.

14 7. The sale is a valid exercise of the Trustee's business judgment in light of the facts and  
15 circumstances of this case, including but not limited to the following:

16 a. The Trustee has advertised the proposed sale extensively, according to the  
17 Court-approved Bidding Procedures and no qualifying overbids were received. No party  
18 other than the Buyer qualified under the Bidding Procedures as a bidder:

19 b. The price obtained by the Trustee for the proposed sale of the Property  
20 appears to the Court to be the highest and best price possible under the circumstances:

21 c. There exists the immediate need to sell the business at this time, because the  
22 business needs full-time and long-term management, including experience in (or the  
23 capacity to obtain experienced assistance in) the marketing and scientific areas of the  
24 business, FDA requirements for labeling of the products, and other areas, which the Trustee

25  
26 In re VAXA INTERNATIONAL, INC.

Case No. 97-14880-A11

27 **ORDER GRANTING THE TRUSTEE'S MOTION FOR APPROVAL OF: (1) SALE OF ESTATE'S INTEREST**  
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**CERTAIN EXECUTORY CONTRACTS; SUBJECT TO OVERBID**

N:\WP\8465-001\lit\sale free and clear order

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TRADEMARK

REEL: 002383 FRAME: 0112

1 as short-term management cannot readily provide:

2 d. The Trustee has encountered difficulties concerning the acquisition of  
3 products from primary suppliers:

4 e. The Trustee does not have the resources or present ability to increase sales  
5 significantly;

6 f. The Trustee does not have the resources to implement a new computer  
7 system:

8 g. The petition in this case was filed in October, 1997, more than twenty (20)  
9 months have passed without approval of a plan or reorganization in this case, and it does not  
10 appear that any plan could be confirmed within ninety (90) days of the date of the hearing  
11 on this Motion:

12 h. The Trustee has concerns about the Debtor's continued ability to compete in  
13 the market absent prompt introduction of management with the long-term resources to  
14 address these issues; and

15 i. The fact that at least \$1.3 million of the purchase price for the Property is to  
16 be secured by a third-party source reduces the risk to the estate and its creditors, and that  
17 there is a cash down-payment.

18 8. Other findings as reflected in the Court's oral statement included on the record at the  
19 close of the hearing on the Trustee's Motion on June 7, 1999.

20 Based upon the forgoing, and good cause appearing therefore.

21 IT IS HEREBY ORDERED that the Trustee's Motion is hereby granted, and the sale to Mr.  
22 William Harper is hereby approved on the terms and conditions contained in the Trustee's Motion.  
23 The only objection to the sale was filed on behalf of the OCC. All of its objections are hereby  
24 overruled. The Trustee is authorized to sell the estate's interest in the Property described below free  
25

26 In re VAXA INTERNATIONAL, INC.

Case No. 97-14880-A11

27 **ORDER GRANTING THE TRUSTEE'S MOTION FOR APPROVAL OF: (1) SALE OF ESTATE'S INTEREST**  
28 **IN SUBSTANTIALLY ALL OF THE ESTATE'S ASSETS (INCLUDING ASSUMPTION AND ASSIGNMENT**  
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**CERTAIN EXECUTORY CONTRACTS; SUBJECT TO OVERBID.**

N:\WP8465-001\lit\sale free and clear order

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TRADEMARK  
REEL: 002383 FRAME: 0113



1 and clear of any and all liens and interests. The Property is defined in the Asset Purchase Agreement  
2 referenced below and shall include: inventory, including product labels, promotional materials; the  
3 real estate lease, furniture, fixtures and equipment located at 6370 Nancy Ridge Drive, Suite 101,  
4 San Diego, CA 92121 (the "Business Premises"); the accounts receivable; all formulas; trademarks;  
5 trade names; customer lists; deposits on facility and equipment leases to be assumed by the Buyer;  
6 and the Debtor's distributor lists. The sale shall be to Mr. William Harper or to such successor entity  
7 as he may designate in writing to the Trustee prior to the close of the sale.

8 IT IS FURTHER ORDERED that the terms of the proposed sale is approved as set forth in  
9 detail in the Motion, and in the attached April 23, 1999 letter from Mr. Osias, counsel to Mr. Harper,  
10 to the Trustee and his counsel and the Addendum adding or modifying terms. A true and correct  
11 copy of the proposed Asset Purchase Agreement is attached hereto as Exhibit "A". The Trustee is  
12 authorized to negotiate, draft and execute an appropriate purchase and sale agreement, in  
13 substantially the form as attached hereto as Exhibit "A", that is in accordance with, and does not  
14 materially differ from, the terms of this Order.

15 IT IS FURTHER ORDERED that this sale is to be free and clear of all liens and interest,  
16 including but not limited to, those liens and interests identified herein:

- 17 1. State tax lien in favor of the State of California recorded in the office of the San  
18 Diego County Recorder on May 23, 1996 in the amount of \$1,981.00 as file number 96-0261836
- 19 2. Federal tax lien in favor of the Internal Revenue Service recorded in the office of the  
20 San Diego County Recorder on October 16, 1996 in the amount of \$206,924.00 as file number 96-  
21 0525434
- 22 3. County tax lien in favor of the County of San Diego recorded in the office of the San  
23 Diego County Recorder on November 5, 1997 in the amount of \$1,421.00 as file number 97-  
24 0557265
- 25 4. County tax lien in favor of the County of San Diego recorded in the office of the San  
26 Diego County Recorder on November 7, 1997 in the amount of \$38,090 as file number 97-05653499
- 27 5. Federal tax lien in favor of the IRS filed with the office of the Secretary of State of  
28 the State of California on October 31, 1996 as file number 9631060542
6. State tax lien in favor of the State of California filed with the office of the Secretary  
of State of the State of California on March 19, 1999 as file number 9908860775
7. State tax lien in favor of the State of California filed with the office of the Secretary  
of State of the State of California on March 19, 1999 as file number 9908860772

In re VAXA INTERNATIONAL, INC.

Case No. 97-14880-A11

**ORDER GRANTING THE TRUSTEE'S MOTION FOR APPROVAL OF: (1) SALE OF ESTATE'S INTEREST  
IN SUBSTANTIALLY ALL OF THE ESTATE'S ASSETS (INCLUDING ASSUMPTION AND ASSIGNMENT  
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LIABILITIES AND TERMINATION OF ESTATE'S LIABILITY THEREON; AND (3) REJECTION OF  
CERTAIN EXECUTORY CONTRACTS; SUBJECT TO OVERBID**

N:\WP8465-001\lit\sale free and clear order

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TRADEMARK

REEL: 002383 FRAME: 0114

1 8. Financing statement in favor of Orix Credit Alliance, Inc. filed with the office of the  
2 Secretary of State of the State of California on March 6, 1995 as file number 9506761186

3 9. Financing statement in favor of Pitney Bowes Credit Corporation filed with the office  
4 of the Secretary of State of the State of California on September 13, 1994 as file number 94188593

5 The claims of liens and/or interest shall attach to the proceeds in the same amount and with the same  
6 priority as they had against the Property, subject to the Trustee's full reservation of all rights to  
7 contest the validity, priority and amount of such claims; provided, however, that the liens and/or  
8 interest of the lessors of executory contracts and/or unexpired leases assumed by the Debtor and  
9 assigned to the Buyer shall transfer with the executory contracts and/or unexpired leases upon entry  
10 of this Order, and shall not attach to the sale proceeds. The Trustee and Debtor estate are relieved  
11 of any and all liability for performance, or for breach of performance, after the assignment of the  
12 subject executory contracts and/or unexpired leases; however, to the extent there is any pre-Closing  
13 default under any of the executory contracts or unexpired leases being assumed and assigned, the  
14 estate shall be solely responsible for payment of any amounts required for compliance with Section  
15 365(b)(1)(A) and (B) of the Bankruptcy Code, and shall be handled by the Trustee either through  
16 a plan of reorganization or other method as may be approved by this Court.

17 IT IS FURTHER ORDERED that the Trustee is hereby authorized and directed to execute  
18 any and all necessary documents to close this sale, and carry out the terms of this Order. All sale  
19 proceeds shall be property of the estate, even if paid through a third party such as an escrow, as  
20 provided in the Motion. The Trustee is authorized to use the proceeds of the sale to satisfy any  
21 undisputed liens and encumbrances that may have attached to the proceeds, in his sole discretion,  
22 and to cure any undisputed arrearages that may be due (if any) under any executory contract and/or  
23 unexpired lease that is to be assumed and assigned pursuant to this Order.

24 ///

25 ///

26 In re VAXA INTERNATIONAL, INC.

Case No. 97-14880-A11

27 **ORDER GRANTING THE TRUSTEE'S MOTION FOR APPROVAL OF: (1) SALE OF ESTATE'S INTEREST**  
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**CERTAIN EXECUTORY CONTRACTS; SUBJECT TO OVERBID**

N:\WP\8465-001\lit\sale free and clear order

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TRADEMARK

REEL: 002383 FRAME: 0115

1 IT IS FURTHER ORDERED that the Trustee is authorized to assume and assign certain  
2 executory contracts and unexpired leases, and certain post-petition agreements under which the  
3 estate bears certain continuing obligations, and the Buyer agrees to assume those agreement. A list  
4 of the agreements to be assumed and assigned is attached hereto as Exhibit "B" and is incorporated  
5 herein by reference as if set forth in full. This assumption and assignment is only effective upon  
6 closing of the sale to the Buyer. Any and all other executory contracts and/or unexpired leases not  
7 expressly assumed and assigned are hereby deemed rejected. Each non-debtor party to an executory  
8 contract or unexpired lease to be assumed and assigned, and each person or entity claiming to be  
9 entitled to the benefits from such contracts or leases, shall be forever barred and enjoined from  
10 asserting against the Buyer any default or claim arising under or pursuant to a contract assumed and  
11 assigned hereunder prior to the Closing; provided, however, that pending cure by the estate of any  
12 arrearage due under any assigned contract of lease, any such claims shall be retained by their holders  
13 as against the estate only.

14 IT IS FURTHER ORDERED that the Trustee is directed to close this sale as soon as all  
15 conditions to closing have been met.

16 IT IS FURTHER ORDERED that this Order is a separate document within the meaning of  
17 Rule 9021 of the Federal Rules of Bankruptcy Procedure, and shall be enforceable immediately upon  
18 entry in accordance with Rule 7062 of the Federal Rules of Bankruptcy Procedure, applicable in this  
19 instance under Rule 9014 of the Federal Rules of Bankruptcy Procedure.

20 ///

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24 ///

25  
26 In re VAXA INTERNATIONAL, INC.

Case No. 97-14880-A11

27 **ORDER GRANTING THE TRUSTEE'S MOTION FOR APPROVAL OF: (1) SALE OF ESTATE'S INTEREST**  
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N:\WP8465-001\lit\sale free and clear order

TRADEMARK  
REEL: 002383 FRAME: 0116

1 IT IS FURTHER ORDERED that this Order shall be binding upon all persons and entities  
2 that received actual notice of the Motion, or substitute service of the Motion, or constructive notice  
3 thereof, in accordance with applicable law, and shall also be binding upon and inure to the benefit  
4 of the Debtor, the Debtor's estate, the Trustee, the Buyer, and their successors and assigns.

5 IT IS FURTHER ORDERED that there is no commission to be paid in this transaction.

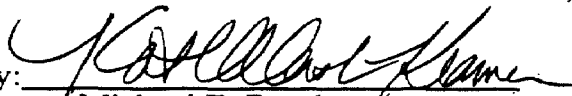
6 IT IS SO ORDERED.

7  
8 DATED: 24 June 99

  
9 JUDGE, UNITED STATES BANKRUPTCY COURT

10 Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by  
11 the order is the relief granted by the court.

12 PYLE SIMS DUNCAN & STEVENSON, APC

13 By:   
14 Michael E. Busch  
15 Kathleen A. Cashman-Kramer  
Attorneys for Ronald J. Sutter, Chapter 11 Trustee

16 Approved as to Form:

17 ALLEN MATKINS LECK GAMBLE & MALLORY LLP

18 By:   
19 David L. Osias  
20 Attorneys for the Buyer William Harper

21  
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23  
24  
25  
26 In re VAXA INTERNATIONAL, INC. Case No. 97-14880-A11  
27 ORDER GRANTING THE TRUSTEE'S MOTION FOR APPROVAL OF: (1) SALE OF ESTATE'S INTEREST  
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CERTAIN EXECUTORY CONTRACTS; SUBJECT TO OVERBID.

N:\WP\8465-001\lit\sale free and clear order

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**ASSET PURCHASE AGREEMENT**

by and between

**The Chapter 11 Bankruptcy Estate of  
VAXA INTERNATIONAL, INC.**  
a Delaware corporation,  
by and through its Chapter 11 Trustee,  
Ronald J. Sutter;

and

**DIRECT ACCESS NETWORK, INC.,**  
a Florida corporation;

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Dated as of June \_\_, 1999

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is entered into as of June \_\_, 1999, by and among the Chapter 11 Bankruptcy Estate (the "Seller") of VAXA INTERNATIONAL, INC., a Delaware corporation (the "Debtor") by and through the duly appointed trustee of that estate, Mr. Ronald Sutter (the "Trustee") and DIRECT ACCESS NETWORK, INC., a Florida corporation [name to be supplied by Purchaser] (the "Purchaser"). Certain capitalized terms used in this Agreement are defined in Exhibit A.

### RECITALS:

A. Seller filed a petition (the "Petition") under Chapter 11 of Title 11, U.S.C. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of California (the "Bankruptcy Court") on October 7, 1997 (the "Petition Date"). Seller has determined that it is in the best interests of its creditors and interestholders to sell and cause to be sold to Purchaser certain assets of Seller for the consideration and upon the terms and conditions set forth herein.

B. The Purchaser desires to acquire and the Seller desires to sell certain assets of Seller on the terms and conditions set forth in this Agreement.

C. The purchase and sale of the sale of assets of the Seller to the Purchaser shall be subject to approval of the Bankruptcy Court pursuant to, among other authorities, Sections 363 and 365 of the Bankruptcy Code as provided for herein ("Bankruptcy Court Approval"). A hearing was held on June 7, 1999 in which the Bankruptcy Court orally approved the proposed sale. A written order confirming that approval is being submitted to the Bankruptcy Court.

### AGREEMENT:

The parties to this Agreement, intending to be legally bound, hereby agree as follows:

#### 1. Sale of Assets: Related Transactions.

1.1 **Sale of Assets.** The Seller shall cause to be sold, assigned, transferred, conveyed and delivered to the Purchaser at the Closing (as defined below) all of the Debtor's right, title and interest to the Assets (as defined below) free of any Encumbrances and claims (as defined in Section 101(5) of the Bankruptcy Code), except as provided herein and in the Order of the Bankruptcy Court approving the sale, on the terms and subject to the conditions set forth in this Agreement. For purposes of this Agreement, "Assets" shall mean and include all of the Debtor's right, title and interest in:

(a) the Real Estate Lease;

(b) a Chevrolet Suburban vehicle and all machinery, equipment, materials, tools, supplies, spare parts, furniture, fixtures, improvements and other tangible assets and personal property of the Seller owned, leased or used by Seller, including, but not limited to, those that are the subject of FF&E Leases set forth in Exhibit B;

(c) all inventory, finished goods, raw materials, labels, packing materials, supplies and promotional materials existing as of the Closing Date (the "Inventory");

(d) all formulas, trademarks, tradenames, customer lists, distributor lists, and other Proprietary Assets and goodwill of the Seller (including the right to use the name "Vaxa International" and variations thereof and the right to enforce all of Seller's rights to the Proprietary Assets and goodwill);

(e) all trade accounts receivable of Seller existing as of the Closing Date;

(f) customer back orders pending at the Closing Date;

(g) all deposits and prepaid rent relating to the Real Estate Lease and all deposits relating to the FF&E Leases;

(h) all books, records and reports (excluding the corporate minute books and stock records of Debtor) relating to the foregoing, including but not limited to lists, files, manuals, wherever located and in written, digital, electronic or other form. Buyer shall maintain those books and records for a period of at least three (3) years from the Closing Date, and shall provide the Trustee with reasonable access thereto; and

(i) The internet web page server which the Debtor shall use its reasonable good faith efforts to have open and operational at the Closing Date.

1.2 **Excluded Assets.** Purchaser shall not acquire and Seller shall retain each of the following assets ("**Excluded Assets**"):

(a) cash on hand, deposits in bank accounts and cash equivalent securities, collections in transit, or other similar items at the Closing Date;

(b) note receivables from G. Young and K. Blanchett and receivables other than trade accounts receivable of Seller;

(c) any deposits not related to the Real Estate Lease, furniture, fixtures or equipment leases;

(d) customer orders (other than back orders) pending at the Closing Date;

(e) investments and the contents of investment accounts;

(f) choses in action against insiders or affiliates of Debtor and all avoidance actions arising under the Bankruptcy Code, including those under 11 U.S.C. §§ 544, 547, 548, 549 and 550;

(g) all assets under any Employee Benefit Plan;

(h) any merchant card accounts and deposits related thereto;

(i) Inventory disposed of in the ordinary course of business prior to the Closing Date;

(j) the Debtor's corporate minute books and stock records;

(k) any tax refunds due to Debtor;

(l) nontransferable permits of Debtor;

(m) all insurance policies of Debtor as of the Closing Date; and

(n) all other contracts, leases, and agreements not included within the Assets (collectively, the "Excluded Agreements").

**1.3 Assumption of Specified Liabilities of Seller.** On the Closing Date, Purchaser shall assume and agree to pay, perform and discharge all liabilities and obligations under the Real Estate Lease and under the FF&E Leases solely to the extent such liabilities and obligations arise subsequent to the Closing Date (the "Assumed Liabilities").

Except as expressly provided in this Section 1.3, Purchaser will not assume or be bound by any liabilities or obligations of the Debtor or Seller in any respect. Purchaser shall have no obligation to employ any employee of the Debtor or Seller or in any manner be responsible for the payment of any compensation, severance and/or termination payment to any employee of the Debtor or Seller. Further, notwithstanding anything to the contrary contained in this Agreement, Purchaser shall not be required to assume or to perform or discharge any liabilities of Seller whatsoever, including without limitation, the following:

(a) any Liability of the Debtor or Seller other than the Assumed

Liabilities:

(b) any Liability of any other Person;

(c) any Liability of the Debtor or Seller arising out of or relating to the execution, delivery or performance of this Agreement or any of the transactions contemplated by this Agreement;



(d) any Liability of the Debtor or Seller for any fees, costs or expenses of the type referred to in Section 7.2 of this Agreement:

(e) any Liability of the Debtor or Seller arising from or relating to any action taken by the Debtor or Seller, or any failure on the part of the Debtor or Seller to take any action, at any time before, after or on the Closing Date:

(f) any Liability of the Debtor or Seller arising from or relating to (i) any services performed by the Debtor or Seller for any customer or (ii) any claim or Proceeding against the Debtor or Seller;

(g) any Liability of the Debtor or Seller for the payment of any Tax; provided, however, that Purchaser shall pay the sales tax on the personal property being sold, excluding assumed lease liabilities:

(h) any Liability of the Debtor or Seller to any employee or former employee of the Seller under or with respect to any Employee Benefit Plan, profit sharing plan or dental plan or for severance pay;

(i) any Liability of the Debtor or Seller to any shareholder or creditor of the Debtor or Seller or any other Related Party;

(j) any Liability under any Seller Contract;

(k) any Liability that is inconsistent with or constitutes an inaccuracy in, or that arises or exists by virtue of any Breach of (i) any representation or warranty made by the Debtor or Seller in this Agreement or (ii) any covenant or obligation of the Debtor or Seller contained in this Agreement; or

(l) any other Liability of the Debtor or Seller, other than the Assumed Liabilities.

#### 1.4 Purchase Price.

(a) As consideration for the sale of the Assets to the Purchaser:

(i) the aggregate cash consideration that the Purchaser shall pay to the Seller shall be \$250,000, subject to adjustment as described below in Section 1.4.1 below (the "Aggregate Cash Consideration") and shall be paid as follows:

(1) prior to the execution of this Agreement, the Purchaser has deposited with the Trustee, in cash, a total of \$50,000.00 (the "Initial Deposit") as an earnest money initially refundable deposit, and the Trustee has deposited the Initial Deposit into a segregated, interest-bearing account. The Bankruptcy Court has approved of this sale at the hearing conducted on June 7, 1999. Thereafter, the Purchaser deposited with the Trustee an additional deposit of \$50,000.00 (the "Second Deposit") and the Trustee

deposited the Second Deposit into the same segregated interest bearing account to either be applied to the cash payment portion of the purchase price at Closing or returned to Purchaser, together with interest earned thereon (less any bank charges), in the event the Closing does not occur by reason of a breach of this Agreement by Seller which has not been cured within thirty (30) days:

(2) at the Closing \$150,000.00, subject to adjustment for Inventory, Accounts Receivable and Deposits balances as described in and calculated pursuant to Section 1.4.1 below, shall be paid to Seller by certified or cashier's check;

(ii) at the Closing, the Purchaser shall also be obligated to execute and deliver to Seller a promissory note in the form of Exhibit C attached hereto (the "Secured Note") in the original amount of \$1,850,000.00. The Purchaser is entitled to assume Mr. Jake Kevorkian's prepetition claims against the Debtor in an amount equal to \$110,000.00 plus such additional amounts as may be allowed by the Bankruptcy Court as a claim attributable to Mr. Kevorkian up to an additional \$5,636.01 (the "Kevorkian Claim") in connection with the transactions contemplated hereby, provided such allowance is finally determined prior to November 1, 1999. In the event the Purchaser assumes the Kevorkian Claim against the Debtor, the amount of such Kevorkian Claim shall constitute part of the Assumed Liabilities (as defined above) and shall be credited against the payments due under the Secured Note in nine (9) equal installments.

The Secured Note shall be secured as follows: (i) by a Letter of Credit in the original stated amount of \$1,315,000.00, subject to adjustment as provided in the Letter of Credit, and (ii) by a first priority floating lien on the Assets, together with after acquired Inventory and accounts receivable as provided for in the Security Agreement attached hereto as Exhibit H and incorporated herein by this reference.

1.4.1 Adjustments to Purchase Price. The Purchase Price has been calculated, in part, on the assumption that (i) the trade accounts receivable acquired by Purchaser outstanding not more than sixty (60) days as of the Effective Time (as defined below) will have a face amount of at least \$47,000.00 as of the Effective Time, (ii) the Inventory will have an adjusted value of at least \$274,000.00 as of the Effective Time consisting of inventory of a quality usable and saleable in the ordinary course of business after write-offs for obsolete materials (materials with an expiration date within ninety (90) days of the Effective Time will be deemed to be obsolete) and materials below standard quality, (iii) all payments due under the FF&E Leases and the Real Estate Lease shall have been paid through June 30, 1999; (iv) deposits for the Real Estate Lease for Purchaser's benefit are not less than \$42,550.85, and (v) deposits for the FF&E Leases for Purchaser's benefit are not less than \$7,974.43. Within ten (10) days after the Closing, the parties will determine the actual value of accounts receivable and Inventory, determine the payments made under the Real Estate Lease, determine the amount of deposits under the Real Estate Lease and FF&E Leases, and the parties shall set forth such calculations in a post-closing certificate (the "Post-closing Certificate") on the basis of Debtor's historical accounting practices for such items, consistently applied. The cash portion of the Purchase Price shall be adjusted upward or downward based upon the parties' calculations of

such Accounts Receivable, Inventory and lease deposits immediately prior to the Closing as set forth in the Post-closing Certificate and paid to the party entitled thereto within ten (10) days after the final determination of the Post-closing Certificate.

1.4.2 **Letter of Credit.** At the Closing, Purchaser shall deliver to Seller, as collateral for the Secured Note, an Irrevocable Letter of Credit substantially in the form attached hereto as Exhibit D and incorporated herein by this reference from an acceptable issuer or an equivalent performance bond or financial guarantee in an equivalent amount and containing or incorporating substantially the same terms, from an insurance company reasonably acceptable to the Trustee (as defined below), such acceptance to not be unreasonably withheld. The initial stated amount of the Letter of Credit or equivalent performance bond or financial guarantee will be \$1,315,000.00 subject to adjustment as provided in Schedule 1 to the proforma Letter of Credit attached hereto as Exhibit D.

1.5 **Sales Taxes.** The Purchaser shall bear and pay, and shall reimburse the Seller for, any sales taxes, use taxes, transfer taxes, documentary charges, recording fees or similar taxes, charges, fees or expenses that may become payable in connection with the sale of the Assets to the Purchaser or in connection with any of the other transactions contemplated by this Agreement. The sales tax is expected to be calculated on the personal property sold, excluding leases of personal property assumed.

1.6 **Allocation.** At or prior to the Closing, the Purchaser shall deliver to the Seller a statement setting forth the Purchaser's reasonable good faith determination of the manner in which the consideration for the Assets is to be allocated among the Assets. The parties shall not file any Tax Return or other document with, or make any statement or declaration to, any Governmental Body that is inconsistent with such allocation.

1.7 **Closing.**

(a) The closing of the sale of the Assets to the Purchaser (the "Closing") shall take place at the offices of Allen, Matkins, Leck, Gamble & Mallory LLP in San Diego, California, at 10:00 a.m. on such date as the Purchaser may designate in a written notice delivered to the Seller, as soon as practicable, but in no event later than June 30, 1999 (the "Scheduled Closing Date"), provided that as of such date, Bankruptcy Court Approval (as hereinafter defined) has been obtained and is in full force and effect; provided, that if the Order is stayed pending appeal on the Scheduled Closing Date, the date of the Closing shall be extended to a date which is the earlier of (i) fifteen days after the Order becomes final, or the stay expires or is vacated or is favorably resolved, or (ii) thirty (30) days after the Scheduled Closing Date (the "Outside Closing Date"). The Effective Time of the Closing shall be 12:01 a.m. on the first day after the Closing Date (the "Effective Time").

(b) **At the Closing:**

(i) The Seller shall deliver or cause to be delivered to Buyer the following:

(A) the Bill of Sale and such other endorsements, assignments and other documents as may be reasonably necessary or appropriate to assign, convey, transfer and deliver to the Purchaser all of the Debtor's right, title and interest in the Assets subject to the Order making this sale free of any encumbrances and claims (as defined in Section 101(5) of the Bankruptcy Code);

(B) possession of the Assets;

(C) duly executed registrations or other documents to transfer title to the Chevrolet Suburban motor vehicle;

(D) a certified copy of the Order of the Bankruptcy Court approving this sale; and

(E) such other instruments or documents as may be reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

(ii) The Purchaser shall deliver or cause to be delivered to Buyer the following:

(A) the remaining balance of the Aggregate Cash Consideration in cash by cashier's check or wire transfer as contemplated by Section 1.4(a)(i)(2);

(B) a duly executed Secured Note;

(C) a duly executed Letter of Credit or performance bond;

(D) a duly executed Security Agreement; and

(E) such other instruments or documents as may be reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

## 2. Effective Date and Bankruptcy Court Approval.

2.1 **Effective Date.** This Agreement is effective as of the date hereof, subject to Bankruptcy Court Approval.

2.2 **Bankruptcy Court Orders.** In contemplation of the transactions addressed in this Agreement, Seller has filed with the Bankruptcy Court an application for an order pursuant to, among others, Sections 363 and 365 of the Bankruptcy Code:

(a) authorizing and approving the sale to Purchaser, pursuant to the terms incorporated into this Agreement, of the Assets and approving the terms of this Agreement;

(b) finding that Purchaser is acting in good faith and is entitled to the protections of a buyer under Section 363(m) of the Bankruptcy Code; and

(c) containing such other findings and provisions as may be reasonably requested by Purchaser to assure that (i) title to the Assets will be transferred to Purchaser free and clear of all Encumbrances and claims (as defined in Section 101(5) of the Bankruptcy Code) and any such Encumbrances and claims shall attach solely to the Purchase Price. (ii) Seller will be duly authorized to execute and deliver such instruments as Seller is required to execute and deliver pursuant to the terms of this Agreement and to consummate the transactions contemplated hereby, and (iii) Seller will be duly authorized to execute and deliver assignments to Purchaser of each of the Real Estate Lease and FF&E Leases as are included in the Assets.

**2.3 Bankruptcy Court Approval Defined.** "Bankruptcy Court Approval" means entry of the orders and findings and conclusions provided for in Section 2.2. above, so long as such orders and findings and conclusions have not been vacated and are not subject to a stay pending appeal or otherwise.

**2.4 Copies of Orders and Court Filings.** Seller shall instruct its counsel to furnish Purchaser and its counsel with copies of all notices, filings and orders of the Bankruptcy Court and other courts pertaining to the transactions contemplated by this Agreement.

**3. Representations and Warranties and Auction Procedures.**

**3.1 Representations And Warranties Of The Seller.** The Seller represents and warrants to and for the benefit of the Purchaser and its Related Parties and Affiliates, as follows:

**3.1.1 AS IS SALE.** EXCEPT AS SET FORTH IN SECTION 3.1.2 BELOW, SELLER MAKES NO REPRESENTATION OR WARRANTY TO THE PURCHASER REGARDING THE ASSETS AND ALL ASSETS ARE SOLD IN "AS IS, WHERE IS" CONDITION. PURCHASER ACKNOWLEDGES AND AGREES THAT NEITHER DEBTOR NOR TRUSTEE HAS MADE OR GIVEN ANY STATEMENTS, OPINIONS, ADVICE, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, CONCERNING THE ASSETS, ANY USES TO WHICH THE ASSETS MAY OR MAY NOT BE PUT OR DEBTOR'S BUSINESS IN ANY RESPECT, INCLUDING, BUT NOT LIMITED TO (I) THE CONDITION OR TITLE TO THE ASSETS; (II) THE NATURE OF PHYSICAL CONDITION OF THE ASSETS; (III) THE INCOME OR EXPENSES, GENERATED, PAID OR INCURRED IN CONNECTION WITH THE ASSETS; (IV) THE ACCURACY OF ANY STATEMENTS, CALCULATIONS OR CONDITIONS STATED OR SET FORTH IN THE DEBTOR'S BOOKS AND RECORDS CONCERNING THE ASSETS; (V) THE SALABILITY, MERCHANTABILITY OR FITNESS FOR ANY

PARTICULAR PURPOSE OR USE OF THE ASSETS BY PURCHASER; (VI) THE CONFORMITY WITH ANY APPLICABLE LAWS OR REGULATIONS OF THE ASSETS OR ANY ASPECT OF THE BUSINESS IN WHICH THE DEBTOR ENGAGED; (VII) THE COMPLIANCE WITH, OR LACK OF VIOLATION OF, ANY OF THE PROPRIETARY RIGHTS; OR (VIII) THE NECESSITY OF PURCHASER TO OBTAIN ANY NECESSARY GOVERNMENTAL APPROVALS OR PERMITS FOR PURCHASER'S INTENDED USE OF THE ASSETS.

PURCHASER ACKNOWLEDGES FOR PURCHASER AND PURCHASER'S SUCCESSORS AND ASSIGNS, (I) THAT PURCHASER HAS BEEN GIVEN A REASONABLE OPPORTUNITY TO INSPECT AND INVESTIGATE THE ASSETS, EITHER INDEPENDENTLY OR THROUGH AGENTS OF PURCHASER'S CHOOSING AND (II) THAT PURCHASER IS ACQUIRING THE ASSETS BASED UPON PURCHASER'S OWN INVESTIGATION AND INSPECTION THEREOF. PURCHASER AGREES THAT THE ASSETS SHALL BE SOLD AND THAT PURCHASER SHALL ACCEPT POSSESSION OF THE ASSETS ON THE DATE OF THE CLOSING IN THEIR "AS-IS, WHERE-IS, WITH ALL FAULTS" CONDITION WITH NO RIGHT OF SET OFF OR REDUCTION IN THE PURCHASE PRICE EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, AND THAT SUCH SALE SHALL BE, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.1.2 HEREOF, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE DEBTOR AND TRUSTEE, AND EACH OF THEM, DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY. PURCHASER SPECIFICALLY ACKNOWLEDGES THAT PURCHASER IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEBTOR OR TRUSTEE OR ANY OF THEIR RESPECTIVE AGENTS, ATTORNEYS, ACCOUNTANTS OR EMPLOYEES AS TO ANY MATTERS CONCERNING THE ASSETS EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.1.2 HEREOF.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, PURCHASER IS RELYING SOLELY UPON ITS OWN INSPECTION OF THE ASSETS AND NOT UPON ANY REPRESENTATIONS MADE TO IT BY ANY PERSON WHATSOEVER. ANY REPORTS, REPAIRS OR WORK REQUIRED ARE TO BE THE SOLE RESPONSIBILITY OF PURCHASER AND PURCHASER AGREES THAT THERE IS NO OBLIGATION ON THE PART OF THE SELLER OR TRUSTEE TO MAKE ANY CHANGES, ALTERATIONS, OR REPAIRS TO THE ASSETS AND PURCHASER ACKNOWLEDGES THAT PURCHASER HAS COMPLETED ITS DUE DILIGENCE WITH RESPECT TO THE ASSETS TO ITS SOLE SATISFACTION. OTHER THAN THE APPROVAL ORDER AND EXCEPT AS OTHERWISE PROVIDED HEREIN, PURCHASER IS SOLELY RESPONSIBLE FOR OBTAINING ANY PERMITS, REGISTRATIONS OR ANY OTHER APPROVALS NECESSARY FOR TRANSFER OR USE OF THE ASSETS AND FOR ANY REPAIRS OR ALTERATIONS NECESSARY TO OBTAIN THE SAME ALL AT PURCHASER'S SOLE COST AND EXPENSE.

3.1.2 Access and Information. To the best of the Trustee's information and belief, Seller and Debtor will deliver to Purchaser and Purchaser's counsel accurate and complete copies of (or access to) all books, records, reports, files, documents and information (collectively, the "Supplied Information") relating in any way to the Assets or Seller's business in the possession of the Trustee.

3.2 **Representations And Warranties Of The Purchaser.** The Purchaser represents and warrants, to and for the benefit of the Seller, as follows:

3.2.1 Authority: Binding Nature of Agreements. The Purchaser has the absolute and unrestricted right, power and authority to enter into and perform its obligations under this Agreement. This Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms.

3.2.2 Organization. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and has the requisite power and authority to carry on its business as presently being conducted.

3.2.3 No Brokers or Finders. No party to this Agreement has any liability or obligation to pay any fees or commissions to any broker or finder with respect to the transactions contemplated by this Agreement.

3.2.4 No Consents. Neither the execution delivery of this Agreement by Purchaser or the other documents and instruments to be executed and delivered by Purchaser pursuant to hereto, nor the consummation by Purchaser of the transactions contemplated hereby requires any third party consent on the part of Purchaser, nor will it violate or conflict with or constitute a default under, or result in the termination of, or accelerate the performance required by, any contract, commitment, understanding, arrangement, agreement or restriction of any kind binding upon Purchaser or to which any of Purchaser's assets or properties are subject. No registration or filing with or consent, approval, permit, authorization or action by any governmental entity is required in connection with the execution and delivery by Purchaser of this Agreement.

3.2.5 Financing. Purchaser has sufficient immediately available financing available to it to permit Purchaser to consummate the purchase of the Assets as contemplated by this Agreement.

4. Conditions to Closing.

The respective obligations of Purchaser to effect the Closing are subject to fulfillment at or prior to the Closing Date of each of the following conditions precedent:

4.1 **Representations and Warranties.** The representations and warranties of Seller and Purchaser to this Agreement shall be true and correct on the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date.

4.2 **Performance of Covenants.** The Seller and the Purchaser shall have duly performed and complied in all material respects with each covenant, agreement and condition required by this Agreement to be performed or complied with by any of them, including the deliveries contemplated hereby, prior to or on the Closing Date.

4.3 **Consents and Approvals.** All required third party consents from any governmental body and all orders of the Bankruptcy Court, including the Bankruptcy Court Approval, shall have been obtained and shall continue to be in full force and effect and not be subject to stay, pending appeal or otherwise.

4.4 **Bill of Sale and Other Documents.** Seller and Trustee shall have executed the Bill of Sale substantially in the form of Exhibit G hereto and such other documents as Purchaser may reasonably be necessary in order to consummate the transactions contemplated by this Agreement.

5. Survival of Representations and Covenants.

5.1 **Survival of Representations and Covenants.** The representations, warranties, covenants and obligations of each party to this Agreement shall survive (without limitation): (i) the Closing and the sale of the Assets to the Purchaser; (ii) any sale or other disposition of any or all of the Assets by the Purchaser; and (iii) the death or dissolution of any party to this Agreement. All of said representations, warranties, covenants and obligations shall remain in full force and effect and shall survive for an unlimited period of time.

5.2 **Further Assurances and Duty to Cooperate.** The parties intend that Purchaser is acquiring the Assets as of the Closing Date and that Debtor shall receive the benefit of the Assets up to and including the Closing Date and be responsible for all obligations related thereto up to and including the Closing Date and that after the Closing Date Purchaser will receive the benefit of the Assets and be responsible for the Assumed Liabilities. Subject to the terms and conditions of this Agreement, Purchaser and Seller shall take all actions and do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations or as requested by Purchaser or Seller, as applicable, to consummate and make effective the transactions contemplated by this Agreement and to put Purchaser in actual possession and operating control of the Assets and to evidence Purchaser's assumption of the Assumed Liabilities. Each of Purchaser and Seller agree to cooperate with each other in obtaining the benefits of this Agreement, including, but not limited to, defending claims that arise out of their respective operation of the Assets so as to allow Purchaser to obtain the benefit of those Assets and be responsible for the obligations related to the Assumed Liabilities after the Closing Date and so as to allow Seller to obtain the benefit of the Assets and be responsible for the obligations related thereto up to and including the Closing Date.

6. Certain Covenants and Additional Agreements.

6.1 **Non-Competition.** For the consideration to be delivered by Purchaser to the Seller pursuant to this Agreement, and as an inducement for Purchaser to enter into this Agreement, the Seller agrees that for a period of two (2) years after the Closing Date, Seller shall



not, and shall not allow the Debtor to, without Purchaser's prior written consent, directly or indirectly, (i) own, manage, operate, join, control or participate in the ownership, management, operation or control of, any business or organization in any of the counties of California or in any part of the United States, which directly or indirectly, competes with the businesses of the Seller as presently conducted or proposed to be conducted or (ii) solicit, induce or influence any employee or distributor of the Purchaser to terminate his or her relationship with the Purchaser. The Trustee and Seller agree to maintain in confidence and not to disclose to any third party, any ideas, methods, formulas, customer lists, distributor lists, supplier lists, business plans, trade secrets or other proprietary information or proprietary rights of the Purchaser or Assets of Seller. Seller and Trustee agree to take such actions as may be necessary to cause the Seller and Debtor to maintain this confidentiality so long as Trustee is acting in his capacity as Trustee. In the event the covenant in this Section 6.2 shall be determined by any court of competent jurisdiction to be unenforceable by reason of its extending for too great a period of time over too great a geographical area or by reason of its being too extensive in any other respect, it shall be interpreted to extend only over the maximum period of time for which it may be enforceable, and/or over the maximum geographical area as to which it may be enforceable and/or to the maximum extent in all other respects as to which it may be enforceable, all as determined by such court in such action.

**6.2 Injunctive Relief.** The Seller and the Trustee acknowledge that breach of the covenant contained in Section 6.2 will cause irreparable damage to Purchaser, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, the Trustee and the Seller agree that if the Seller breaches the covenant contained in Section 6.2, in addition to any other remedy which may be available at law or in equity, Purchaser shall be entitled to specific performance and injunctive relief, without posting a bond or other security.

**6.3 Change of Seller's Name.** Seller agrees to amend Seller's Certificate of Incorporation immediately after the Closing to change Seller's name to such other name as may be reasonably acceptable to Purchaser and to file such amendment with the Secretary of State of the State of Delaware.

**6.4 Maintenance of Books and Records.** Purchaser agrees to maintain the books and records of Seller that are delivered to Purchaser at the Closing for a period of not less than three (3) years from the Closing Date.

**7. Miscellaneous Provisions.**

**7.1 No Personal Obligations of the Trustee.** The Trustee has executed this Agreement solely in his capacity as trustee for the Debtor's bankruptcy estate as Seller, and has not executed it as an individual or in any other capacity other than as Trustee. The obligations and liabilities of the Trustee under the terms of this Agreement are solely obligations arising out of, and related to, his appointment as trustee of the Debtor estate and in connection with the liabilities and obligations of the Debtor estate, and are not personal obligations or liabilities of the Trustee.

7.2 **Further Assurances.** Each party hereto shall execute and/or cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

7.3 **Fees and Expenses.** Each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accountants.

7.4 **Attorneys' Fees.** If any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement is brought against any party to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

7.5 **Notices.** Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service or by facsimile, but if sent by facsimile, with a confirming copy to be sent by first class mail) to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

if to the Seller:

Vaxa International, Inc.  
6370 Nancy Ridge Drive, Suite 101  
San Diego, CA 92121  
Attention: Ronald J. Sutter, Trustee  
Fax No.: (619) 625-8257

with a copy to the Trustee:

Ronald J. Sutter  
Post Office Box 2010  
Alpine, CA 91903

with a copy to:

Michael E. Busch, Esq.  
Pyle, Sims, Duncan & Stevenson  
401 "B" Street, Suite 1500  
San Diego, CA 92101

if to the Purchaser:

Direct Access Network, Inc.  
2860 Scherer Drive, Suite 650  
St. Petersburg, FL 33716  
Fax No.: (727) 573-3695

with a copy to:

David L. Osias, Esq.  
Allen, Matkins, Leck, Gamble & Mallory LLP  
501 West Broadway, Suite 900  
San Diego, CA 92101

**7.6 Time of the Essence.** Time is of the essence with respect to the matters set forth in this Agreement.

**7.7 Headings.** The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

**7.8 Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

**7.9 Governing Law; Venue.**

(a) This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of California (without giving effect to principles of conflicts of laws).

(b) Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement may be brought or otherwise commenced in the Bankruptcy Court, if the Debtor's bankruptcy case is still open. In the event the Debtor's bankruptcy case has been closed, then such action or proceeding relating to this Agreement or the enforcement of any provision of this Agreement may be brought or otherwise commenced in any state or federal court located in the County of San Diego, California.

**7.10 Successors And Assigns; Parties In Interest.**

(a) This Agreement shall be binding upon: the Seller, the Debtor and the Trustee, in his capacity as trustee only, and their respective successors and assigns (if any) and the Purchaser and its successors and assigns (if any). This Agreement shall inure to the benefit of: the Seller; the Debtor; the Purchaser; the Trustee; any Disbursing Agent who may succeed the Trustee; and the respective successors and assigns (if any) of the foregoing.

(b) It is contemplated that, at some time subsequent to the Closing Date, the Trustee will be discharged and a Disbursing Agent appointed by the Bankruptcy Court to replaced the Trustee, primarily for the purpose of distributing the proceeds of this sale to the creditors of the Debtor estate. Upon appointment of such a Disbursing Agent (if any), the Disbursing Agent shall give notice of his appointment in writing to the Purchaser and his counsel, at the addresses set forth above in Section 7.5.

(c) None of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the parties to this Agreement and their respective successors and assigns (if any). Without limiting the generality of the foregoing, (i) no employee of the Seller or Debtor or Purchaser shall have any rights under this Agreement, and (ii) no creditor of the Seller or Debtor or Purchaser shall have any rights under this Agreement.

**7.11 Remedies Cumulative; Specific Performance.** The rights and remedies of the parties hereto shall be cumulative (and not alternative).

**7.12 Waiver.**

(a) No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

**7.13 Amendments.** This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of the Purchaser and the Seller.

**7.14 Severability.** In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**7.15 Entire Agreement.** This Agreement sets forth the entire understanding of the parties relating to the subject matter thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter thereof.

**7.16 Construction.**

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa: the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

(d) Except as otherwise indicated, all references in this Agreement to "Sections" and "Exhibits" are intended to refer to Sections of this Agreement and Exhibits to this Agreement.

**7.17 No Brokers or Finders.** No party to this Agreement has any liability or obligation to pay any fees or commissions to any broker or finder with respect to the transactions contemplated by this Agreement.

The parties to this Agreement have caused this Agreement to be executed and delivered as of the day and year first above written.

**PURCHASER:**

DIRECT ACCESS NETWORK, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
Ronald J. Sutter, Trustee for the Bankruptcy  
Estate of VAXA INTERNATIONAL, INC.,  
a Delaware corporation

**EXHIBITS TO ASSET PURCHASE AGREEMENT  
(VAXA INTERNATIONAL, INC.)**

Exhibit A	Definitions
Exhibit B	FF&E Leases
Exhibit C	Secured Note
Exhibit D	Letter of Credit
Exhibit E	Bankruptcy Court Orders (Actual)
Exhibit F	Bill of Sale
Exhibit G	Security Agreement

## EXHIBIT A

### CERTAIN DEFINITIONS

For purposes of the Agreement (including this Exhibit A):

**Agreement.** "Agreement" shall mean the Asset Purchase Agreement to which this Exhibit A is attached, as it may be amended from time to time.

**Affiliate.** "Affiliate" shall mean as to any Person (as hereinafter defined below), any other Person, which is an officer, director, shareholder or relative (as defined in Bankruptcy Code Section 101(45), of such Person, or any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

**Breach.** There shall be deemed to be a "Breach" of a representation, warranty, covenant, obligation or other provision if there is or has been (a) any inaccuracy in or breach (including any inadvertent or innocent breach) of, or any failure (including any inadvertent failure) to comply with or perform, such representation, warranty, covenant, obligation or other provision, or (b) any claim (by any Person) or other circumstance that is inconsistent with such representation, warranty, covenant, obligation or other provision, and the term "Breach" shall be deemed to refer to any such inaccuracy, breach, failure, claim or circumstance.

**Contract.** "Contract" shall mean any written, oral, implied or other agreement, contract, understanding, arrangement, instrument, note, guaranty, indemnity, representation, warranty, deed, assignment, power of attorney, certificate, purchase order, work order, insurance policy, benefit plan, commitment, covenant, assurance or undertaking of any nature.

**Damages.** "Damages" shall include any loss, damage, injury, decline in value, lost opportunity, Liability, claim, demand, settlement, judgment, award, fine, penalty, Tax, fee (including any legal fee, expert fee, accounting fee or advisory fee), charge, cost (including any cost of investigation) or expense of any nature.

**Employee Benefit Plan.** "Employee Benefit Plan" shall have the meaning specified in Section 3(3) of the Employee Retirement Income Security Act, as amended.

**Encumbrance.** "Encumbrance" shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, equity, trust, equitable interest, claim, preference, right of possession, lease, tenancy, license, encroachment, covenant, infringement, interference, Order, proxy, option, right of first refusal, preemptive right, community property interest, legend, defect, impediment, exception, reservation, limitation, impairment, imperfection of title, condition or restriction of any nature (including any restriction on the transfer of any asset, any restriction on the receipt of any income derived from any asset, any restriction on the

EXHIBIT A

use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

**Entity.** "Entity" shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, cooperative, foundation, society, political party, union, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

**FF&E Leases.** "FF&E Leases" shall mean the written leases identified in Exhibit B, true and correct copies of which have been supplied to Purchaser and its counsel.

**Governmental Body.** "Governmental Body" shall mean any: (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Entity and any court or other tribunal); (d) multi-national organization or body; or (e) individual, Entity or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

**Inventory.** "Inventory" shall mean all inventory, finished goods, raw materials, labels, packing materials, promotional materials and supplies of the Seller.

**Legal Requirement.** "Legal Requirement" shall mean any federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, requirement, specification, determination, decision, opinion or interpretation issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Body.

**Liability.** "Liability" shall mean any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with generally accepted accounting principles and regardless of whether such debt, obligation, duty or liability is immediately due and payable.

**Order.** "Order" shall mean any: (a) order, judgment, injunction, edict, decree, ruling, pronouncement, determination, decision, opinion, verdict, sentence, subpoena, writ or award issued, made, entered, rendered or otherwise put into effect by or under the authority of any court, administrative agency or other Governmental Body or any arbitrator or arbitration panel; or (b) contract with any Governmental Body entered into in connection with any Proceeding.



**Person.** "Person" shall mean any individual, Entity or Governmental Body.

**Proceeding.** "Proceeding" shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding and any informal proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or any arbitrator or arbitration panel

**Proprietary Asset.** "Proprietary Asset" shall mean any formula, patent, patent application, trademark (whether registered or unregistered and whether or not relating to a published work), trademark application, trade name, fictitious business name, service mark (whether registered or unregistered), service mark application, copyright (whether registered or unregistered), copyright application, maskwork, maskwork application, trade secret, know-how, customer list, distributor list, franchise, system, computer software, invention, design, blueprint, engineering drawing, proprietary product, technology, proprietary right or other intellectual property right or intangible asset.

**Real Estate Lease.** "Real Estate Lease" shall mean that certain real estate lease dated as of August 1, 1998, by and between Nancy Ridge Technology Center LLC and the Debtor relating to the real property located at 6370 Nancy Ridge Drive, Suite 101, San Diego, California 92121, and providing a lease termination date of January 31, 2000.

**Related Party.** Each of the following shall be deemed to be a "Related Party": (a) each individual who is, or who has at any time been, an officer of the Seller; (b) each member of the family of each of the individuals referred to in clause "(a)" above; and (c) any Entity (other than the Seller) in which any one of the individuals referred to in clauses "(a)" and "(b)" above holds or held (or in which more than one of such individuals collectively hold or held), beneficially or otherwise, a controlling interest or a material voting, proprietary or equity interest.

**Representatives.** "Representatives" shall mean officers, directors, employees, agents, attorneys, accountants, advisors and representatives.

**Seller Proprietary Asset.** "Seller Proprietary Asset" shall mean any Proprietary Asset owned by or licensed to the Seller or otherwise used by the Seller.

**Tax.** "Tax" shall mean any tax (including any income tax, franchise tax, capital gains tax, estimated tax, gross receipts tax, value-added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, occupation tax, inventory tax, occupancy tax, withholding tax or payroll tax), levy, assessment, tariff, impost, imposition, toll, duty (including any customs duty), deficiency or fee, and any related charge or amount (including any fine, penalty or interest), that is, has been or may in the future be (a) imposed, assessed or collected by or under the authority of any Governmental Body, or (b) payable pursuant to any tax-sharing agreement or similar Contract.

**EXHIBIT "B" TO THE ASSET PURCHASE AGREEMENT**

**FF&E LEASES**

For purposes of this Asset Purchase Agreement the term "FF&E Leases" shall mean and include all of the Seller's and Debtor's right, title and interest in and to the following:

1. All machinery, equipment, materials, tools, supplies, spare parts, furniture, fixtures, improvements and other tangible assets of the Seller owned, leased or used by Seller, including, but not limited to, those that are the subject of the following leases:
  - a. Ford Financial Services master lease dated April 26, 1995 and attendant schedules, and amendments and assignments thereto (as reflected in the public records), as follows:
    - i. Equipment lease. expires April 25, 2000
    - ii. Equipment lease. expires July 30, 2001
    - iii. Equipment lease. expires April 29, 2002
    - iv. Equipment lease. expires June 23, 2002
  - b. IKON Capital lease dated approximately January 17, 1995, and expires January 17, 2000
  - c. ICON Cash Flow lease for computer equipment, which original lease was dated approximately April 6, 1995 with Liberty Leasing Corporation, and expires April 5, 2000
  - d. Purchase money lien and/or lease asserted by or on behalf of an entity known as HRS in connection with certain furniture allegedly located at the business premises

**EXHIBIT C**

**SECURED PROMISSORY NOTE**

\$1,850,000.00

June \_\_, 1999

FOR VALUE RECEIVED, the undersigned (the "Borrower"), hereby promises to pay to the order of Ronald J. Sutter, as Trustee of the Chapter 11 Bankruptcy Estate of Vaxa International, a Delaware corporation or his duly appointed successor, or order ("Lender"), at its office at \_\_\_\_\_, San Diego, California \_\_\_\_\_ in lawful money of the United States of America, the principal amount set forth above, together with interest on the unpaid balance of said principal amount from time to time remaining outstanding from the date of this Note, until maturity, in like money, at said office, without interest. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Asset Purchase Agreement by and between Lender and the undersigned Borrower dated as of June \_\_, 1999 (the "Agreement").

1. Installment Payments. The note shall be payable as follows:

- (i) Borrower shall pay to Lender \$175,000 on December 31, 1999 (such payment date being hereinafter referred to as the "First Payment Date");
- (ii) Borrower shall pay to Lender \$175,000.00 on June 30, 2000 (the "Second Payment Date");
- (iii) Borrower shall pay to Lender \$200,000.00 on December 31, 2000 (the "Third Payment Date");
- (iv) Borrower shall pay to Lender \$200,000.00 on June 30, 2001 (the "Fourth Payment Date");
- (v) Borrower shall pay to Lender \$200,000.00 on December 31, 2001 (the "Fifth Payment Date");
- (vi) Borrower shall pay to Lender \$200,000.00 on June 30, 2002 (the "Sixth Payment Date");
- (vii) Borrower shall pay the Lender \$225,000.00 on December 31, 2002 (the "Seventh Payment Date");
- (viii) Borrower shall pay to Lender \$225,000.00 on June 30, 2003 (the "Eighth Payment Date");
- (ix) Borrower shall pay to Lender \$250,000.00 on December 31, 2003 (the "Final Payment Date"). The Payment Dates are hereinafter collectively referred to as "Payment Dates" and individually referred to as a "Payment Date."

EXHIBIT C

In the event Borrower shall have assumed the Kevorkian Claim (as provided in the Agreement), such payments shall be reduced by the amount of the Kevorkian Claim, prorata over nine (9) equal installments on each of the nine (9) Payment Dates.

Any Payment not made on the Payment Date and any balance accelerated for default, shall accrue interest at ten percent (10%) per annum. Payments shall be applied first to attorneys' fees and costs, then to interest accrued, then to principal.

Each Payment Date shall be extended in the event such date does not fall on a business day. For purposes of the Note the term "business day" shall mean and refer to a day other than a Saturday, Sunday or other day on which commercial banks in San Diego or the State of California are authorized or required by law to close.

2. Prepayment Option. Borrower shall have the right, from time to time, without premium or penalty, to prepay the indebtedness evidenced by this Note, in whole or in part.

3. Attorneys' Fees. If this Note is collected by suit or through the bankruptcy court, or any judicial proceeding, or if this Note is not paid at maturity, however such maturity may occur, and it is placed in the hands of an attorney for collection (whether or not legal proceedings are instituted), then Borrower agrees to pay, in addition to all other amounts owing hereunder, the reasonable collection costs and reasonable attorneys' fees of the holder hereof.

4. Security. This Note is secured by an Irrevocable Letter of Credit or Performance Bond or Financial Guarantee (any of which shall hereinafter be referred to as the "Letter of Credit") in the original amount of \$1,315,000, subject to adjustment as prescribed therein, issued by \_\_\_\_\_ or other issuer reasonably acceptable to Lender, which acceptance shall not be unreasonably withheld and is further secured by the collateral (as defined in the Security Agreement attached as Exhibit H to the Agreement) (the Letter of Credit and Security Agreement being hereinafter collectively referred to as the "Security Document"). The amount of the Letter of Credit shall be reduced following each timely-made payment for the Note payments referred to in Section 1 above by: (i) the amount of such payment made (but excluding the credits for the Kevorkian claim assumption); and (ii) an adjustment in the Stated Amount as defined in and determined pursuant to the Letter of Credit.

5. Events of Default: Acceleration. If any of the following events ("Events of Default") shall occur:

(i) If Borrower shall default in the payment of any installment due hereunder as specified in the payment schedule set forth in Section 1 above after a cure period of twenty (20) days following notice from each Payment Date;

(ii) Borrower shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy" as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code"); or an involuntary case is commenced against Borrower, and the petition is not controverted within twenty (20) days, or is not

dismissed within 60 days, after commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of Borrower, or Borrower commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to Borrower, or there is commenced against Borrower any such proceeding which remains undismissed for a period of 60 days, or Borrower is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or Borrower suffers any appointment of any custodian or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 60 days; or Borrower makes a general assignment for the benefit of creditors; or any action is taken by Borrower for the purpose of effecting any of the foregoing; or

(iii) Borrower defaults in the performance or observance of any of the covenants or obligations under any Security Document pursuant to which Borrower is obligated to Lender; or

(iv) In the event Borrower has provided a Letter of Credit with an expiration date earlier than March 31, 2004, and the Borrower fails to furnish to Lender a replacement Letter of Credit for the then outstanding balance of the Note in a form and from an issuer reasonably acceptable to Lender by no later than forty-five (45) days prior to the Expiration Date of the Letter of Credit then in effect;

then and in any such event, the holder of this Note may at any time (unless all defaults shall have been remedied), at its option, declare this Note to be due and payable, whereupon the same shall forthwith mature and become due and payable without presentment, demand, protest or notice, all of which are hereby waived.

6. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered or mailed by first class registered or certified mail, postage prepaid, addressed, (i) if to the holder of this Note to whom this Note is originally issued, to Vaxa International, c/o Ronald J. Sutter, Trustee, P.O. Box 2010, Alpine, California 91903, or at such other address as may have been furnished to Borrower by such holder in writing, with a copy to Michael E. Busch, Esq., Pyle, Sims, Duncan & Stevenson, APC, 401 "B" Street, Suite 1500, San Diego, California 92101, or (ii) if to any other holder of this Note, at such address as may have been furnished to Borrower in writing by such holder, or, until such other holder furnishes to Borrower an address, then to, and at the address of, the last holder of this Note who has furnished in writing an address to Borrower, or (iii) if to Borrower, to Direct Access Network, 2860 Scherer Drive, Suite 650, St. Petersburg, Florida 33716, or such other address as may have been furnished in writing by Borrower to the last holder of this Note who has furnished in writing an address to Borrower.

7. Amendments and Waivers. Neither this Note nor any term hereof may be changed, waived, discharged or terminated orally or in writing, except that any term of this Note may be amended and the observance of any such term may be waived (either generally or in a

particular instance and either retroactively or prospectively) with (but only with) the written consent of the holder of this Note. Borrower and all sureties, endorsers and guarantors of this Note waive demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate maturity, notice of acceleration of maturity and all other notice, filing of suit and diligence in collecting this Note or enforcing any of the security for this Note, and agree to any substitution, exchange or release of any such security, the release of any party primarily or secondarily liable hereon and further agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any security for this Note, and consent to any one or more extensions or postponements of time of payment of this Note on any terms or any other indulgences with respect hereto, without notice thereof to any of them. No waiver of any default or event of default or failure or delay to exercise any right or remedy by the holder of this Note shall operate as a waiver of any other default or Event of Default or the same default or Event of Default in the future or as a waiver of any right or remedy with respect to the same or any other occurrence.

8. Benefit. All of the covenants, stipulations, promises and agreements contained in this Note by Borrower shall be binding upon Borrower and its permitted successors and assigns and shall inure to the benefit of and be enforceable by the holder of this Note and its successors and assigns. Borrower shall not assign any of its obligations under this Note without Lender's prior written consent which Lender shall be entitled to withheld in its sole and absolute discretion.

9. Governing Law. This Note shall be governed by and construed in accordance with the internal laws of the State of California.

DIRECT ACCESS NETWORK, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**LETTER OF CREDIT**

Ronald J. Sutter, Trustee  
Post Office Box 2010  
Alpine, CA 91903

June \_\_, 1999

Ladies and Gentlemen:

We hereby establish in your favor, for the account of \_\_\_\_\_, a \_\_\_\_\_ corporation ("Applicant"), our Irrevocable Letter of Credit and authorize you to draw on us at sight the aggregate amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), subject to adjustment as provided in Schedule I attached hereto and incorporated herein by this reference ("Stated Amount").

Funds under this Letter of Credit are available to you as the Trustee of the Chapter 11 Bankruptcy Estate of the corporation formerly known as Vaxa International, Inc. or his duly appointed successor (the "Beneficiary") as follows:

Any and all of the sums hereunder may be drawn down at any time and from time to time from and after the date hereof by Beneficiary when accompanied by this Letter of Credit and a written certification signed by an authorized signatory of Beneficiary certifying that such sums are due and owing to Beneficiary as a result of a default by Applicant with respect to any provision of that certain Secured Promissory Note dated June \_\_, 1999 ("Note") by and between Beneficiary, as Lender, and Applicant, as Borrower, together with a notarized certification by any such individual representing that such individual is authorized by Beneficiary to take such action on behalf of Beneficiary. The sums drawn by Beneficiary under this Letter of Credit shall be payable upon demand after not less than ten (10) days prior written notice to the Applicant. Partial drawings shall be permitted.

This Letter of Credit is not transferable.

The amount of each draft must be endorsed on the reverse hereof by the negotiating bank. We hereby agree that this Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above.

This Letter of Credit shall expire on March 31, 2004, or such time as the Stated Amount in this Letter of Credit, calculated in accordance with the adjustment provisions set forth in Schedule I, results in a zero balance.

EXHIBIT D

This Letter of Credit is governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500.

Very truly yours.

(Name of Issuing Bank)

By: \_\_\_\_\_



## SCHEDULE 1

### ADJUSTMENTS TO IRREVOCABLE LETTER OF CREDIT AMOUNT

The original Stated Amount of the Letter of Credit shall be \$1,315,000.00. The Stated Amount shall: (i) decline on a dollar-for-dollar basis, for every payment made under the Secured Note in favor of Beneficiary from Applicant, and shall: (ii) be adjusted up or down on a dollar-for-dollar basis, for any change in the aggregate value of Eligible Accounts and Eligible Inventory, each as defined herein, above or below \$321,000.00, determined by Applicant and certified to Beneficiary (subject to Beneficiary's reasonable right to review supporting documentation) as of January 1 and June 30 of each year commencing January 1, 2000, calculated based upon the average month-ending balances and agings of Eligible Inventory and Eligible Accounts Receivable, as applicable, over the prior six (6) month period. For these purposes, the term "Eligible Account" shall mean an account receivable of Applicant: (a) upon which Applicant's right to receive payment is absolute and not contingent upon the fulfillment of any condition whatsoever; (b) that is a true and correct statement of a bona fide indebtedness incurred in the amount of the account receivable for goods sold or leased and delivered to, or for services rendered to and accepted by, the account debtor; (c) that is owned by Applicant and has not been otherwise pledged or hypothecated, and which is due and payable not more than sixty (60) days from the date of billing thereof based on the original invoice date; and (d) excluding sales to Affiliates (as defined in the Asset Purchase Agreement dated as of June \_\_, 1999) and any internal "house account" or similar sales that do not reflect a bona fide indebtedness from a third-party, non-affiliate person or entity as certified by a duly authorized representative of Applicant, including the non-affiliate status of such person. "Eligible Inventory" shall mean inventory, including finished goods, raw materials, labels, packing materials, promotional materials and supplies which are owned by Applicant and are not in the reasonable judgment of Beneficiary, obsolete, unsaleable, damaged, unfit for further processing or otherwise unacceptable. Eligible Inventory shall be valued at the lower of cost or market in accordance with generally accepted accounting principles, consistently applied.

On each January 1 and June 30 that the Letter of Credit is outstanding, Applicant shall supply a report setting forth the amount of Eligible Accounts and Eligible Inventory, together with payments made under the Note and the Stated Amount of the Letter of Credit shall be reduced as set forth in this Schedule I. An authorized representative of Beneficiary shall be entitled to inspect Applicant's facilities and Applicant's books and records, solely for the purpose of verifying the information set forth in Applicant's semiannual report.

SCHEDULE 1

**EXHIBIT E**

**BANKRUPTCY COURT ORDER (ACTUAL)  
[TO BE INSERTED ON SIGNING OF ORDER]**

**EXHIBIT E**

**EXHIBIT F**

**BILL OF SALE**

This BILL OF SALE, effective as of June \_\_, 1999 ("Effective Date"), is executed by Ronald J. Sutter, the duly appointed Trustee of the Chapter 11 Bankruptcy Estate of Vaxa International, Inc., a Delaware corporation ("Seller"), and DIRECT ACCESS NETWORK, INC., a Florida corporation ("Purchaser"), pursuant to an Asset Purchase Agreement ("Purchase Agreement") dated June \_\_, 1999, between Seller and Purchaser.

IN CONSIDERATION of the payment of the Purchase Price specified in Section 1.4 of the Purchase Agreement and the mutual covenants set forth therein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, pursuant to the approval and authority granted by the Order entered June \_\_, 1999 by the United States Bankruptcy Court for the Southern District of California in case number 97-14880-A11, hereby sells, assigns and transfers to Purchaser all of Seller's right, title and interest in the personal property more particularly described on Exhibit "A" attached hereto and made a part hereof ("Personal Property"), including, but not limited to, those items described in Section 1.1 of the Purchase Agreement.

Possession of the Personal Property shall be delivered to Buyer on the Effective Date set forth above.

This Bill of Sale shall be governed, construed and enforced in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Bill of Sale has been executed in the City of San Diego, County of San Diego, State of California, to be effective on the Effective Date first set forth above.

PURCHASER:

DIRECT ACCESS NETWORK, INC.,  
a Florida corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT F

[SIGNATURE PAGE ATTACHED TO BILL OF SALE]

SELLER:

---

Ronald J. Sutter, Trustee for the Bankruptcy  
Estate of VAXA INTERNATIONAL, INC.,  
a Delaware corporation

**EXHIBIT "A" TO THE BILL OF SALE**  
**PERSONAL PROPERTY**

For purposes of this Bill of Sale "**Personal Property**" shall mean and include all of the Seller's and Debtor's right, title and interest in and to the following:

1. the Seller's and Debtor's interest as lessee in the real estate lease dated as of August 1, 1998, by and between Nancy Ridge Technology Center LLC and the Debtor, relating to the real property located at 6370 Nancy Ridge Dr. #101, San Diego, CA 92121, and providing a lease termination date of January 31, 2000:
2. A Chevrolet Suburban vehicle and all machinery, equipment, materials, tools, supplies, spare parts, furniture, fixtures, improvements and other tangible assets and personal property of the Seller, owned, leased or used by Seller, including, but not limited to, those that are the subject of the following FF&E Leases:
  - a. Ford Financial Services master lease dated April 26, 1995 and attendant schedules, and amendments and assignments thereto (as reflected in the public records), as follows:
    - i. Equipment lease, expires April 25, 2000
    - ii. Equipment lease, expires July 30, 2001
    - iii. Equipment lease, expires April 29, 2002
    - iv. Equipment lease, expires June 23, 2002
  - b. IKON Capital lease dated approximately January 17, 1995, and expires January 17, 2000
  - c. ICON Cash Flow lease for computer equipment, which original lease was dated approximately April 6, 1995 with Liberty Leasing Corporation, and expires April 5, 2000
  - d. Purchase money lien and/or lease asserted by or on behalf of an entity known as HRS in connection with certain furniture allegedly located at the business premises
3. all inventory, finished goods, raw materials, labels, packing materials, supplies, and promotional materials existing as of the Closing Date (the "Inventory");
4. all formulas, trademarks, tradenames, customer lists, distributor lists, and other Proprietary Assets and goodwill of the Seller (including the right to use the name "Vaxa International" and variations thereof and the right to enforce all of Seller's rights to the Proprietary Assets and goodwill);
5. all trade accounts receivable of Seller existing as of the Closing Date;
6. Customer back orders pending at the Closing Date;
7. all deposits and prepaid rent relating to the Real Estate Lease and all deposits relating to the FF&E Leases;
8. all books, records and reports (excluding the corporate minute books and stock records of Debtor) relating to the foregoing, including but not limited to lists, files, manuals, wherever located and in written, digital, electronic or other form. Buyer shall maintain those books and records for a period of at least three (3) years from the Closing Date, and shall provide the Trustee with reasonable access thereto; and
9. The Internet web page server which the Debtor shall use its reasonable good faith efforts to have open and operational at the Closing Date.

**TRADEMARK**

**REEL: 002383 FRAME: 0150**

**EXHIBIT G**

**SECURITY AGREEMENT**

THIS SECURITY AGREEMENT ("Agreement"), is executed as of this \_\_\_\_\_ day of June, 1999, by and among the Chapter 11 Bankruptcy Estate (the "Seller") of VAXA INTERNATIONAL, INC., a Delaware corporation (the "Debtor") by and through the duly appointed trustee of that estate, Mr. Ronald J. Sutter (the "Trustee"), as "Secured Party" and DIRECT ACCESS NETWORK, INC., a Florida corporation ("Obligor").

**WITNESSETH:**

In consideration of Secured Party's agreement to sell certain assets to Obligor pursuant to that certain Asset Purchase Agreement dated as of June \_\_, 1999, by and between Secured Party and Obligor (the "Asset Purchase Agreement"), Obligor, for the benefit of Secured Party, its successors and assigns, agrees as follows:

1. **Grant of Security Interest.** Obligor hereby grants and transfers to Secured Party a security interest in all of the personal property, rights, titles and interests set forth in Exhibit A attached hereto (the "Collateral") which Obligor now has or hereafter acquires and, wherever located. This grant is made to secure the full and prompt payment and performance of Obligor's obligation under the Secured Note (the "Note") of even date herewith in the original principal amount of \$ \_\_\_\_\_ (the "Obligations"). The amount of security for the note payments referred to in Section 1 of the Promissory Note from Obligor in favor of Secured Party shall be reduced following each timely-made payment by: the amount of such payment made under the Note. The remaining amount of the Letter of Credit shall also be reduced by an adjustment in the Stated Amount as defined in and determined pursuant to the Letter of Credit, a copy of which is attached to the Asset Purchase Agreement; however, the amount of Obligations secured by the Collateral covered by this Security Agreement shall be the entire unpaid balance (as adjusted to account for prior payments only).

2. **Title to Collateral.** Obligor has good and marketable title to the Collateral free and clear of any lien, security interest, pledge, assignment, license, encumbrance or other interest of any third party, except for (a) liens for taxes, assessments or other governmental charges not yet due and payable or which are being diligently contested in good faith by Obligor by appropriate proceedings, and (b) the lien granted to Secured Party hereby (collectively, the "Permitted Liens"). Obligor affirmatively represents and warrants that the accounts are "Eligible Accounts", as that term is defined in the accompanying Letter of Credit of even date, and that Obligor has good and marketable title to the Collateral, and has not otherwise pledged or hypothecated the Collateral.

3. **Principal Place of Business.** Obligor's principal place of business is located at 2860 Scherer Drive, Suite 650, St. Petersburg, Florida 33716 (the "Obligor's Place of Business"); Obligor will immediately give written notice to Secured Party of any change of address in the Obligor's Place of Business.

4. Use of Collateral. The security interest granted hereby shall continue until full performance by Obligor of all conditions and obligations hereunder and the payment in full of all of Obligor's Obligations under the terms of the Promissory Note. Obligor shall be entitled to possession of the Collateral until an Event of Default (as defined herein) occurs. Obligor shall pay all fees, taxes and other charges thereon when due.

5. Events of Default: Acceleration. If any of the following events ("Events of Default") shall occur:

(i) If Obligor shall default in the payment of any installment due under the Note as specified in the payment schedule set forth therein after a cure period of twenty (20) days following notice from each Payment Date (as defined in the Note);

(ii) Obligor shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy" as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code"); or an involuntary case is commenced against Obligor and the petition is not controverted within twenty (20) days, or is not dismissed within sixty (60) days, after commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of Obligor, or Obligor commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency of liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to Obligor, or there is commenced against Obligor any such proceeding which remains undismissed for a period of sixty (60) days, or Obligor is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or Obligor suffers any appointment of any custodian or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of sixty (60) days; or Obligor makes a general assignment for the benefit of creditors; or any action is taken by Obligor for the purpose of effecting any of the foregoing; or

(iii) Obligor defaults in the performance or observance of any of the covenants or obligations under any security document pursuant to which Obligor is obligated to Secured Party;

then and in any such event, the Secured Party may at any time (unless all defaults shall have been remedied) at its option, declare all Obligations to be immediately due and payable, whereupon the same shall forthwith mature and become due and payable without presentment, demand, protest or notice, all of which are hereby waived.

6. Secured Party's Remedies. Upon the occurrence and during the continuance of an Event of Default, Secured Party, at its option and in its sole, absolute and subjective discretion, and without notice or demand, may exercise and shall have any and all rights and remedies accorded to Secured Party under this Security Agreement or otherwise by the California Uniform Commercial Code and/or any other governing law, including, without limitation, Secured Party may retain the Collateral in satisfaction of the obligation or sell the

Collateral at public or private sale in accordance with the California Uniform Commercial Code, the Florida Uniform Commercial Code, or any other applicable statute.

7. Perfection of Security Interest. Obligor agrees to execute and authorizes Secured Party to file, with the Secretary of State of California, Secretary of State of Florida and the appropriate County Recorders and/or any other state, federal or foreign agency or office, UCC-1 Financing Statements ("**Financing Statements**") and/or any and all other documents necessary to perfect the security interest granted pursuant to this Agreement with respect to any of the Collateral covered by this Agreement. Obligor agrees that any filing fees incurred may be added to the Obligations secured by this Agreement, including filing fees for continuation statements or assignments of Financing Statements. A copy of this Agreement may be filed as a financing statement. Obligor agrees, in addition, to execute and deliver all other certificates and forms with the security interest of the Secured Party noted thereon, required by Secured Party which may be necessary in the Secured Party's judgment to perfect the security interest of Secured Party in compliance with the federal laws or the laws of California or any other state or foreign country.

8. Insurance. Obligor will maintain at all times during the term of this Agreement insurance with respect to the Collateral against loss, damage, theft and other risks customarily insured against by persons engaged in businesses similar to that of Obligor. Such policies shall provide that any losses thereunder shall be payable to the Secured Party as its interests may appear, and Obligor will deliver to the Secured Party, at its request, evidence satisfactory to the Secured Party that such insurance has been so procured and made payable to the Secured Party. If Obligor fails to maintain satisfactory insurance, the Secured Party shall have the option to do so and Obligor agrees to repay all amounts so expended by the Secured Party.

9. Remedial Advances. At its option, but without obligation to Obligor and without relieving Obligor from any default, Secured Party may discharge taxes, liens or other encumbrances levied or placed upon the Collateral, may maintain and pay insurance thereon, and may order and pay for any necessary repairs or maintenance of the Collateral. Obligor agrees to reimburse Secured Party upon demand for amounts so expended.

10. Attorneys' Fees; Costs. Obligor agrees to reimburse Secured Party for all costs, expenses, and fees (including, without limitation, reasonable attorneys' fees) that Secured Party incurs in connection with the realization or enforcement of any obligation or remedy contained in the Note. All such costs, expenses and fees shall be due and payable upon demand and shall be secured by this Agreement.

11. Other Documents and Actions. Obligor will, from time to time, at its expense, promptly execute and deliver all further instruments and documents and take all further action that may be necessary or desirable, or that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Obligor will: (a) execute such



financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as Secured Party may request, in order to perfect and preserve the security interests granted or purported to be granted hereby; (b) at any reasonable time, upon demand by Secured Party, the Company shall allow inspection of the Collateral by Secured Party or persons designated by Secured Party; and (c) upon Secured Party's reasonable request, appear in and defend any action or proceeding that may affect Obligor's title to or Secured Party's security interest in the Collateral.

12. Corporate or Name Change. Obligor will notify Secured Party promptly of any change in Obligor's name, identity or corporate structure.

13. Business Locations. Obligor will give Secured Party thirty (30) days prior notice of any change in Obligor's chief place of business or of any new location of business or any new location for any of the Collateral. With respect to any new location, Obligor will execute such documents and take such actions as Secured Party deems necessary to perfect and protect the security interest in the Collateral.

14. Taxes and Claims. Obligor will pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims against, the Collateral (including claims for labor, materials and supplies), except to the extent the validity thereof is being contested in good faith.

15. Collateral Description. Obligor will furnish to Secured Party, from time to time but no more often than quarterly, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral, all in reasonable detail, as Secured Party may reasonably request.

16. Secured Party's Rights. If any Event of Default shall have occurred and be continuing, Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) and all of the rights and remedies provided for in this Agreement. Secured Party also may: (a) require Obligor to, and Obligor hereby agrees that it will, at its expense and upon request of Secured Party forthwith, assemble all or part of the Collateral as directed by Secured Party and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties; (b) without notice or demand or legal process to the extent permitted by law, enter upon any premises of Obligor and take possession of the Collateral; and (c) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Secured Party's offices or elsewhere, at such time or times, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as to be commercially reasonable.

17. Notices. All notices, requests, demands and other communications under this Agreement must be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the date indicated on the return receipt as the date of receipt or refusal if mailed to the party to whom notice is to be

given by first class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:

To the Obligor: Direct Access Network, Inc.  
2860 Scherer Drive, Suite 650  
St. Petersburg, FL 33716  
Attention: William Harper

With a copy to: David L. Osias, Esq.  
Allen, Matkins, Leck, Gamble & Mallory LLP  
501 West Broadway, Suite 900  
San Diego, CA 92101

To the Secured Party: Ronald J. Sutter  
Post Office Box 2010  
Alpine, CA 91903

With a copy to: Michael E. Busch, Esq.  
Pyle, Sims, Duncan & Stevenson  
401 "B" Street, Suite 1500  
San Diego, CA 92101

Any party may change its address for the purpose of this Section 8 by giving the other party written notice of the new address in the manner set forth above.

18. Secured Party Consent Required. Obligor shall not sell all or substantially all of its assets or enter into any merger, reorganization, or stock purchase agreement representing the sale of or transfer of all of its shares to a third party without the prior written consent of Secured Party during the term of this Agreement, which consent shall not be unreasonably withheld.

19. Amendments. Obligor, by its execution hereof, agrees that any modification or rescission of this Agreement shall be ineffective unless in writing and signed by both Secured Party and Obligor. Notice of the acceptance of this Agreement by Secured Party is hereby waived by Obligor.

20. Construction. This Agreement shall be construed in accordance with the laws of the state of California. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

21. Successors and Assigns. Secured Party may assign its rights and obligations under this Agreement by notifying Obligor of such assignment and providing Obligor with a copy of such assignment. Obligor shall not assign or otherwise transfer, by operation of

law or otherwise, any of its rights or obligations under this Agreement to another party or parties without the prior written consent of Secured Party, which consent, in connection with the sale of substantially all of Obligor's business to an unrelated third party, shall not be unreasonably withheld so long as such third party will be assuming all of the obligations under this Agreement and appropriate evidence of such assumption is delivered to Secured Party. Subject to the foregoing, this Agreement and all rights and liabilities hereunder shall inure to the benefit of and be binding upon Secured Party and Obligor, their respective successors and permitted assigns.

IN WITNESS WHEREOF, Secured Party and Obligor have each executed this Agreement as of the date first above written.

"Obligor"

DIRECT ACCESS NETWORK, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

"Secured Party"

\_\_\_\_\_  
Ronald J. Sutter, Trustee, for the Bankruptcy  
Estate of VAXA INTERNATIONAL, INC.,  
a Delaware corporation

## EXHIBIT "A" TO SECURITY AGREEMENT

All machinery, equipment, materials, tools, supplies, spare parts, furniture, fixtures, improvements and other tangible assets of Obligor; all formulas, trademarks,

tradenames, customer lists, distributor lists, and other proprietary assets of Obligor; all books, records and reports and all proceeds relating to the foregoing; all Accounts and Inventory of the Obligor. "Accounts" means all accounts (as "account" is defined in the California Commercial Code, Section 9106) now owned or hereafter created or acquired by Obligor including, without limitation, all of the following now owned or hereafter created or acquired by Obligor:

(a) accounts receivable, contract rights, book debts, notes, drafts and other obligations or indebtedness owing to Obligor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (b) Obligor's rights in, to and under all purchase orders for goods, services or other property; (c) Obligor's rights to any goods, services or other property represented by any of the foregoing (including returned or repossessed goods and unpaid sellers' rights of rescission, replevin, reclamation and rights to stoppage in transit); (d) monies due to or to become due to Obligor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services (whether or not yet earned by performance on the part of the Obligor); and (e) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any Person with respect to any of the foregoing. "Inventory" means all "inventory" (as defined in the California Commercial Code, Section 9109), in all of its forms, now owned or hereafter acquired by Obligor, wherever located.

EXHIBIT "A" TO SECURITY AGREEMENT

1. Non-residential real property Lease dated as of August 1, 1998 for the space located at 6370 Nancy Ridge Dr. #101, San Diego, CA 92121, with Nancy Ridge Technology Center LLC as the lessor. expires January 31, 2000
2. Ford Financial Services master lease dated April 26, 1995 and attendant schedules, and amendments and assignments thereto (as reflected in the public records), as follows:
  - a. Equipment lease. expires April 25, 2000
  - b. Equipment lease. expires July 30, 2001
  - c. Equipment lease, expires April 29, 2002
  - d. Equipment lease, expires June 23, 2002
3. IKON Capital lease dated approximately January 17, 1995, and expires January 17, 2000
4. ICON Cash Flow lease for computer equipment, which original lease was dated approximately April 6, 1995 with Liberty Leasing Corporation, and expires April 5, 2000
5. Purchase money lien and/or lease asserted by or on behalf of an entity known as HRS in connection with certain furniture allegedly located at the business premises

## **LIST OF EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED**

In re VAXA INTERNATIONAL, INC.

Case No. 97-14880-A11

**ORDER GRANTING THE TRUSTEE'S MOTION FOR APPROVAL OF: (1) SALE OF ESTATE'S INTEREST IN SUBSTANTIALLY ALL OF THE ESTATE'S ASSETS (INCLUDING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS) FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (2) LIMITED ASSIGNMENT OF CERTAIN SPECIFIED LIABILITIES AND TERMINATION OF ESTATE'S LIABILITY THEREON; AND (3) REJECTION OF CERTAIN EXECUTORY CONTRACTS; SUBJECT TO OVERBID**

### ***EXHIBIT "B"***